

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

NEUMANN HOMES, INC., et al.,

Debtors.

Chapter 11

Case No. 07-20412

(Jointly Administered)

Hon. Eugene R. Wedoff

**INDYMAC'S RESPONDS TO VILLAGE OF
GILBERTS MOTION FOR RELIEF FROM STAY**

IndyMac Ventures, LLC ("IndyMac"), by and through its attorneys, states its position that the motion of the Village of Gilberts ("Gilberts") for relief from the automatic stay ("Stay Relief Motion") should be stricken as inconsistent with the Debtors' proposed Plan, and as possibly outside this Court's jurisdiction.

Funds that the Stay Relief Motion seeks to recover ("Improvement Fund") for use by Gilberts to pay legal and engineering fees it owes, cannot properly be awarded to Gilberts at this time for that or any other purpose. These funds are a portion of municipal bond proceeds:

- (i) That allegedly are ear-marked for particular specified uses by Gilberts upon submission of draw requests satisfying certain contractual conditions, and
- (ii) In which Wells Fargo Bank, N.A., as Indenture Trustee ("Bond Trustee"), claims to hold a security interest,

all under a December 1, 2006 Trust Indenture ("Indenture") entered into between Gilberts and the Bond Trustee.

The proposed Plan provides for the Debtor to transfer ownership of its Conservancy development in Kane County, Illinois to IndyMac, whereby IndyMac will receive all appurtenant rights, title and interests in and to this property. It is understood between IndyMac and the Debtors that a determination of the extent to which such rights and interests includes all or part

of the Improvement Fund or the right to expenditure thereof for the benefit of further development of the Conservancy, is to be addressed and resolved separately from the Plan and outside the Debtors' bankruptcy proceedings. IndyMac further states its position as follows:

1. By its Stay Relief Motion, Gilberts seeks adjudication in its favor of its claim that legal and engineering fees it incurred may be paid from the \$355,160 balance remaining in the Improvement Fund that was created pursuant to the Indenture in connection with Special Service Area Number Nineteen Special Tax Bonds Series 2006-1 ("SSA-19 Bonds").

2. The Improvement Fund was established to facilitate development of the Conservancy and repayment of the SSA-19 Bonds. Cash deposited in the Improvement Fund was a contractually designated portion of proceeds from the sale of SSA-19 Bonds, which Article VII of the Trust Indenture states "shall be disbursed solely for the payment of the cost of acquiring, constructing and installing, and performing" certain "Special Services"—defined in an exhibit to the Trust Indenture as particular infrastructure improvements to the Conservancy.

3. Objecting to the Stay Relief Motion [Docket # 2120], the Bond Trustee thus contends that "under certain circumstances and conditions and for certain purposes, monies in the Improvement Fund may be disbursed by the Bond Trustee to the Village"; that Gilberts must submit a "Draw Request" meeting all requirements of the Indenture; and that the Bond Trustee holds a security interest in the Improvement Fund [*Id.* ¶¶2-3, at 2].

4. It is therefore possible that the subject matter of the Stay Relief Motion not only is outside the scope of the Debtors' proposed Plan, but also is outside of this Court's jurisdiction.

5. Further, as stated in its objection to the Stay Relief Motion [Docket # 2113], Platte River Insurance Company ("Platte River") issued a Subdivision Improvement Performance Bond, bonding the obligation of Debtor Neumann Homes, Inc. ("NHI") to complete

certain underground improvements within the Conservancy as to which Gilberts has asserted a default by NHI and served notice of a claim on Platte River.

6. Platte River contends that to the extent Gilberts asserts a default by NHI in its obligation to complete underground improvements within the Conservancy, the Indenture does not permit and Court may not properly allow Gilberts to recover the \$355,160 balance remaining the Improvement Fund for payment of legal and engineering fees not directly related to performance of “Special Services” as provided for in and defined by the Indenture.

7. The Conservancy is in early stages of development, and secures a small portion of the Debtors’ indebtedness to IndyMac. In exchange for a release of the Debtors from such indebtedness, their proposed Plan seeks to transfer ownership of the Conservancy to IndyMac. As noted above, IndyMac and the Debtors agree that a determination of the extent to which rights and interests to be so transferred to IndyMac entails the Improvement Fund or its expenditure for the benefit of further development of the Conservancy, is to be addressed and resolved separately from the Plan and outside the Debtors’ bankruptcy proceedings.

8. Substantial interests of IndyMac (and potentially other parties) that would be adjudicated by a ruling on the Stay Relief Motion not only have been reserved for determination among interested parties at a later time upon transfer of the Conservancy to IndyMac, but also are neither ripe for hearing nor could otherwise be appropriately and fully heard simultaneously with the Court’s consideration of the Debtors’ request for confirmation of their proposed Plan.

9. Therefore, the adjudication sought by the Stay Relief Motion should await and be combined with future disposition of the Conservancy and determination of rights and obligations of the foregoing parties and Gilberts in respect to this and other assets that are related to or could be affected by disposition of the remaining balance of the Improvement Fund.

WHEREFORE, IndyMac Ventures, LLC respectfully requests that the Court strike the motion of the Village of Gilberts for relief from the automatic stay as inconsistent with the Debtors' proposed Plan, and as possibly outside this Court's jurisdiction.

Dated: January 26, 2010

INDYMAC VENTURES, LLC

/s/ Jonathan P. Friedland

Jonathan P. Friedland (ARDC #6257902)

Levenfeld Pearlstein, LLC

2 North LaSalle Street, Suite 1300

Chicago, IL 60602

Tel: (312) 476-7598

Fax: (312) 346-8434

Counsel for IndyMac Ventures, LLC

CERTIFICATE OF SERVICE

I, Jonathan P. Friedland, hereby certify that on January 26, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF Participants:

David S Adduce dadduce@komdr.com
Beverly P. Alfon balfon@baumsigman.com, dfarrell@baumsigman.com
Margaret M Anderson panderson@fhslc.com,
cjelks@fhslc.com;kmarietta@fhslc.com;acotter@fhslc.com
Steven E Anderson sanderson@btlaw.com, KBRUHNKE@BTLaw.com
George P Apostolides gpapostolides@arnstein.com
Brian A. Audette baudette@perkinscoie.com
J. Douglas Bacon douglas.bacon@lw.com, chefiling@lw.com
David W Baddley baddleyd@gtlaw.com, powelly@gtlaw.com
Paige E Barr paige.barr@kattenlaw.com
Richard M Bendix rbendix@dykema.com, nrakunas@dykema.com
Edwin E Brooks ebrooks@mcguirewoods.com, dklebek@mcguirewoods.com
Abraham Brustein abrustein@dimonteandlizak.com
Daniel E Budorick dbudorick@pecklaw.com, lbarker@pecklaw.com;acustardo@pecklaw.com
Amy E Bullock abullock@cohonraizes.com
Alice D. Burke alice.burke@lw.com, chefiling@lw.com
Judy B Calton jcalton@honigman.com
Kurt M Carlson kcarlson@muchshelist.com, dmyer@muchshelist.com
Mark J. Carroll carrollmark@ameritech.net
Barry A Chatz bachatz@arnstein.com
John J Chitkowski jjc@chitkowskilaw.com, jennifer@chitkowskilaw.com
Rosanne Ciambrone rciambro@duanemorris.com
Scott R Clar sclar@craneheyman.com, mjoberhausen@craneheyman.com;asimon@craneheyman.com
Robert Clark rclark@douglas.co.us
Patrick A Clisham patrickclisham@hotmail.com
Christopher Combest ccombest@quarles.com, Faye.Feinstein@quarles.com
William J Connelly wconnelly@hinshawlaw.com
Faith Dolgin faith.dolgin@illinois.gov
Bruce Dopke bruce@dopkelaw.com
Brian M. Dougherty bmd@gsrnh.com
Dennis A Dressler ddressler@dresslerpeters.com
Kevin C. Driscoll kevin.driscoll@btlaw.com, kathy.bruhnke@btlaw.com
Timothy D. Elliott telliott@rathjewoodward.com, nwood@rathjewoodward.com
Earle Erman eerman@ermanteicher.com, deisenberg@ermanteicher.com
Earle I Erman , deisenberg@ermanteicher.com
John F. Etzkorn johnetz@aol.com
Terence M Fenelon tmf523@comcast.net
Michelle J Fisk michelle.fisk@icemiller.com, michelle.fisk@icemiller.com
Amy Galvin-Grogan kim@garellilaw.com
Vipin R Gandra vipingandra@yahoo.com
Alan Garrow agarrow@nealisgarrow.com
Eugene J Geekie egeekie@schiffhardin.com
Daniel L Giudice dan1413@aol.com, giudicelaw@gmail.com
Richard N Golding rgolding@goldinglaw.net

Gary E. Green ggreen@clarkhill.com, jfelker@clarkhill.com
Perry Grimaldi perry@perrygrimaldi.com
Robert T Hanlon rob@rhanlonlaw.com
Samuel G. Harrod sharrod@mpslaw.com
David S. Heller david.heller@lw.com, chefiling@lw.com
Donna R Henderson donna@hendersonandhendersonlaw.com
Christopher P Hughes chughes@gwclaw.com
Scott E Jensen sjensen@mjwchicago.com
Jennifer L Johnson jjohnson@zcwlaw.com, vblazina@zcwlaw.com
Lisa D. Johnson lisa.johnson@hklaw.com
Ronald J. Kapustka rkapustka@ksnlaw.com
Alexander D Kerr akerr@tishlerandwald.com, bmurzanski@tishlerandwald.com
Peter P Knight peter.knight@lw.com, chefiling@lw.com
Michelle M Kohut mmk@corboydemetrio.com, sdudak@corboydemetrio.com
Robert J. Labate robert.labate@hklaw.com
Richard G Larsen rglarsen@mrmlaw.com
Richard S Lauter rlauter@freebornpeters.com,
bkdocketing@freebornpeters.com;pscott@freebornpeters.com
Ryan O. Lawlor r_lawlor@vedderprice.com, ecfdocket@vedderprice.com
Joanne Lee jlee@foley.com
Joy E Levy jelevy@arnstein.com, joyelevy@yahoo.com
Colleen M Loftus cloftus@loftusloftus.com
Patrick J. Mazza pmazza810@aol.com, schodera@mcminc.net
James M McArdle jmcardle@skcounsel.com
Harold E. McKee hmckee@rmp-llc.com
Daniel E McKenzie dmckenzie@burgsimpson.com
Colleen E McManus cmcmanus@muchshelist.com
G. Alexander McTavish alexmctavish@mrmlaw.com
Lawrence R Moelmann lmoelmann@hinshawlaw.com
Sherri Morissette morissettes@gtlaw.com, rodriguezeli@gtlaw.com
Christopher B. Morozin cmorozin@sjtpom.com
Jill L Murch jmurch@foley.com, rbressler@foley.com
Lauren N. Nachinson Lauren.Nachinson@quarles.com, Faye.Feinstein@quarles.com
William T Neary USTPRegion11.ES.ECF@usdoj.gov
David A. Newby dnewby@jnlegal.net, cjohnson@jnlegal.net
Norman B Newman nnewman@muchshelist.com
Richard T. Niemerg rniemerg@rolaw.net
Joel H Norton jnorton@rss-cthd.com, dcasey@rss-cthd.com;jtolemy@rss-cthd.com;jobereiner@rss-cthd.com;vkingsley@rrs-cthd.com
Monica C O'Brien gstern1@flash.net
Gregory Otsuka gregoryotsuka@paulhastings.com, ruthrosen@paulhastings.com
George Panagakis gpanagak@skadden.com,
stwillia@skadden.com;pkrebs@skadden.com;mmirkovi@skadden.com;jpfleege@skadden.com;mcampa
a@skadden.com;eric.howe@skadden.com;mark.rakoczy@skadden.com
Nancy A Peterman petermann@gtlaw.com,
carlsonk@gtlaw.com;greenbergc@gtlaw.com;ostrowe@gtlaw.com;lowena@gtlaw.com;bloomw@gtlaw.
com;heyens@gtlaw.com
Ann E Pille ann.pille@dlapiper.com, apille@reedsmith.com
John F. Pollick jpollick@mcguirewoods.com
Mark L Radtke mradtke@shawgussis.com, dkrasa-berstell@akingump.com
Douglas Rallo rallolaw@yahoo.com

Michael L Ralph mralph@rss-cthd.com, vkingsley@rrs-cthd.com;dcasey@rss-cthd.com;jtolemy@rss-cthd.com;jobereiner@rss-cthd.com
John M. Riccione jriccione@agdglaw.com
Robert E Richards rrichards@sonnenschein.com, NDIL_ECF@sonnenschein.com
Cornelius F Riordan criordan@rmp-llc.com
Jeffrey B Rose jrose@tishlerandwald.com, bmurzanski@tishlerandwald.com
George Rosenberg grosenberg@co.arapahoe.co.us
John C Ruddy jruddy@rmklawfirm.com, lincoln@rmklawfirm.com
Michael M Schmahl mschmahl@mcguirewoods.com,
docket@mcguirewoods.com;cgunderson@mcguirewoods.com
David J Schwab djschwab@rss-cthd.com, vkingsley@rrs-cthd.com;dcasey@rss-cthd.com;jtolemy@rss-cthd.com;jobereiner@rss-cthd.com
John E. Sebastian jsebastian@hinshawlaw.com, sedelmaier@hinshawlaw.com
Robert V. Shannon robert.shannon@klgates.com, chicago.docket@klgates.com
Brian L Shaw bshaw100@shawgussis.com, bharrington@shawgussis.com
Peter A Siddiqui peter.siddiqui@kattenlaw.com
Michael J. Small msmall@foley.com, khall@foley.com
Morgan M. Smith mmsmith@dykema.com, truckman@dykema.com
Mark J Stauber markjlaw@aol.com, stauberlaw@comcast.net
Miriam R. Stein mrstein@arnstein.com
Gregory K Stern gstern1@flash.net, steve_horvath@ilnb.uscourts.gov
Douglas J Sury doug@keaycostello.com
Pia N Thompson pthompson@ksnlaw.com
Mark Van Donselaar mvandonselaar@grayslakelaw.com
Jon C Vigano jvigano@schiffhardin.com, edocket@schiffhardin.com;dgordon@schiffhardin.com
Michael B Weininger mweininger@lw-llp.com, cpotter@lw-llp.com
John R Weiss jrweiss@duanemorris.com
Ariel Weissberg ariel@weissberglaw.com, Hava@weissberglaw.com
Andrew E Weissman andrew.weissman@db.com
Stephen D Williamson stwillia@skadden.com, rjacobs@ecf.epiqsystems.com
John P Wise jwise@jolietcity.org
Stephen G Wolfe USTPRegion11.es.ecf@usdoj.gov,
steve.g.wolfe@usdoj.gov;jennifer.r.toth@usdoj.gov
Zhiyuan Xu mxu@schiffhardin.com
Barbara L Yong blyong@golanchristie.com
Daniel A Zazove docketchi@perkinscoie.com
James P. Ziegler jziegler@spklaw.com

and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants as indicated on the attached Service List.

/s/ Jonathan P. Friedland

Jonathan P. Friedland (ARDC #6269772)
Levenfeld Pearlstein, LLC
2 North LaSalle Street, Suite 1300
Chicago, IL 60602
Tel: (312) 476-7598
Fax: (312) 346-8434
Counsel for IndyMac Ventures, LLC

U.S. MAIL SERVICE LIST

Atradius Trade Credit Insurance Inc
5026 Campbell Blvd Suite C
Baltimore, MD 21236

Allison R Bach
Dickinson Wright PLLC
500 Woodward Ave
Detroit, MI 48226

Shawn A. Cinnamon
38172 N. Manor Avenue
Beach Park, IL 60087-1631

Warren E Crabill
Crabill & Crabill, Ltd
123 Water Street
Naperville, IL

Matthew T Ferris
Winstead PC
1201 Elm Street, Suite 5400
Dallas, TX 75270

Christopher J Forsyth
500 W Big Beaver Road
Troy, MI 48084

Britt Isaly
140 S Dearborn St Sixth Flr
Chicago, IL 60603

Keating & Shure Ltd
Keating & Shure Ltd
150 N Wacker Ste 1550
Chicago, IL 60606

Phillip L Lamberson
Winstead PC
1201 Elm Street, Suite 5400
Dallas, TX 75270

LandCap Partners
c/o Mr Tony Bains
2000 Avenue of the Stars, Suite 1020
Los Angeles, CA 90067

Ralph E McDowell
Bodman LLP
1901 St Antoine Street
6th Floor at Ford Field
Detroit, MI 48226

Jeffrey B Miller
Carson Fischer, PLC
4111 Andover Road West 2nd Floor
Bloomfield Hills, MI 48302-1924

Neumann Homes of Colorado, LLC;
4355 Weaver Parkway, Suite 1070
Warrenville, IL 60555

Ocean Atlantic/PFG-Southbury, LLC
1800 Diagonal Road Suite 350
Alexandria, VA 22314-2842

Shari L Pollesch
Burchfield, Park & Pollesch,PC
225 E Grand River Ave Ste 203
Brighton, MI 48116

Ron Saxbury
11402 S Trailmaster Cir
Parker, CO 80134

Skadden, Arps, Slate, Meagher & Flom
333 West Wacker Dr, Suite 2100
Chicago, IL 60606-1285

Travelers National Accounts
1 Tower Square 5MN
Attn Scot Freeman
Hartford, CT 06183-4044

Williams Scotsman Inc.
Bankruptcy Service Center
8211 Town Center Dr
White Marsh, MD 21236